



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** THE COMMISSION  
STAFF DIRECTOR  
GENERAL COUNSEL  
CHIEF COMMUNICATIONS OFFICER  
FEC PRESS OFFICE  
FEC PUBLIC DISCLOSURE

**FROM:** COMMISSION SECRETARY *MWD*

**DATE:** JULY 31, 2007

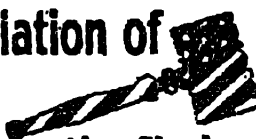
**SUBJECT:** COMMENT ON DRAFT AO 2007-11  
California Republican Party and  
California Democratic Party

**Transmitted herewith is a timely submitted comment from Mark Brewer, President of the Association of State Democratic Chairs, regarding the above-captioned matter.**

**Proposed Advisory Opinion 2007-11 is on the agenda for Wednesday, August 1, 2007.**

**Attachment**

# Association of State Democratic Chairs



Mark Brewer  
President

Ann Fishman  
Executive Director

July 30, 2007

Federal Election Commission  
999 E Street NW  
Washington, DC 20463  
Attention: Rosemary C. Smith

Re: Comments on Draft Advisory Opinion 2007-11

Dear Commissioners:

I am writing on behalf of the Association of State Democratic Chairs (the Association) to comment on the draft advisory opinion 2007-11 requested by the California Democratic and Republican State Parties. The request asks for guidance regarding the extent to which Federal candidates and officeholders may be mentioned in communications relating to fundraising events for State and local party committees at which non-federal contributions are solicited and accepted. The Association represents the State Chairs and Vice-chairs of the various State committees of the Democratic Party and has a deep interest in the Commission's response to the question posed by the request.

The Association believes that the answers to the questions raised in the request can be found in the statutory language. The statute broadly prohibits Federal candidates and officeholders from soliciting political contributions that are not subject to the limitations, prohibition and reporting requirements of Federal law. It creates an exception, however, that allows a candidate or Federal office holder to "attend, speak or be a featured guest at a fundraising event for a State, district or local committee of a political party." (2 U.S.C. § 441i(e)(3)). Congress was concerned that absent this exemption the law might be understood to prohibit candidates and officeholders from being publicly associated with these events. Therefore, it created an exemption that clearly allows covered individuals to be identified as participating in State and local party fundraising events.

One need only look to the language of the exemption to conclude that Congress contemplated and approved references to Federal candidates and officeholders in the advertising and publicity surrounding such events. The statute expressly allows a candidate or officeholders to be "a featured guest". If the candidate or officeholder cannot be featured in the invitations to

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the event, it is difficult to determine what the exemption accomplishes. A featured guest is commonly understood to be someone who is singled out for particular attention or publicity. A featured guest is certainly not a mystery guest. Congress understood that it was creating an exemption that would permit State and local party committee to widely publicize the attendance of Federal candidates and officeholders at State party fundraising events. The Commission should not undercut Congress's clear intent by essentially reading the exemption out of the law.

Members of Congress recognized when they voted for the exemption that it would permit their names to be included in invitations to party fundraising events. Members themselves would not be able to solicit non-federal money for the event, but their participation in the event could be widely publicized. Most such events raise non-federal money. It is hard to believe that Congress would create an exemption that would require a State or local party committee to mail the invitation and the response card separately. Not only does such a requirement add substantially to the cost of the event, it also makes it less likely that Federal candidates and officeholders will be invited to speak at such events. Neither result is one that a majority in Congress would likely have intended.

Additionally, one can easily imagine the confusion that requiring separate mailings would create in a prospective donor's mind. For example, if a State committee has a prominent Senator and prospective Presidential candidate as a featured speaker at its annual Jefferson Jackson dinner, the potential donor could be told in an initial invitation of the Senator's appearance but in the follow-up solicitation there could be no mention of the featured speaker. On those facts the donor might well conclude that the Senator would not be speaking and might forego attending the event. If the State committee had not heard back from the prospective donor and consequently, called the donor, the State committee could at that time reference the Senator's attendance. Such a result defies common sense.

The adoption of the proposed draft is also likely to create conflicts with State disclaimer and notification laws. Many states are likely to consider the initial invitation that mentions the Federal candidate or officeholder to be a solicitation that must comply with State notification and disclaimer laws. Compliance with those laws may conflict with the advice proposed in the advisory opinion. Before adopting the draft, the Commission should consider the potential impact on State law.

In summary, the Association would urge the Commission to read the statute in a manner that best carries out Congress's intent to allow Federal candidates and officeholders to continue to participate in party fundraising events as speakers and guests and to allow the party to fully publicize that participation.

Very truly yours,



Mark Brewer  
President

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